

# Senate File 390 - Introduced

SENATE FILE 390  
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 1144)

## A BILL FOR

1 An Act relating to the permitting, licensing, construction, and  
2 operation of nuclear generation facilities.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 476.6, subsection 22, Code 2011, is  
2 amended by adding the following new paragraph:

3 NEW PARAGRAPH. *d.* A rate-regulated electric utility that  
4 was subject to a revenue sharing settlement agreement with  
5 regard to its electric base rates as of January 1, 2010, shall  
6 file an application for ratemaking principles applicable to the  
7 construction of a nuclear generating facility with the board.  
8 The application shall comply with the provisions of section  
9 476.53.

10 Sec. 2. Section 476.53, Code 2011, is amended to read as  
11 follows:

12 **476.53 Electric generating and transmission facilities.**

13 1. It is the intent of the general assembly to attract  
14 the development of electric power generating and transmission  
15 facilities within the state in sufficient quantity to ensure  
16 reliable electric service to Iowa consumers and provide  
17 economic benefits to the state. It is also the intent of the  
18 general assembly to encourage rate-regulated public utilities  
19 to consider altering existing electric generating facilities,  
20 where reasonable, to manage carbon emission intensity in  
21 order to facilitate the transition to a carbon-constrained  
22 environment.

23 ~~2.~~ *a.* The general assembly's intent with regard to the  
24 development of electric power generating and transmission  
25 facilities, or the significant alteration of an existing  
26 generating facility, as provided in this subsection ~~1~~, shall be  
27 implemented in a manner that is cost-effective and compatible  
28 with the environmental policies of the state, as expressed in  
29 Title XI.

30 *b.* The general assembly's intent with regard to the  
31 reliability of electric service to Iowa consumers, as provided  
32 in this subsection ~~1~~, shall be implemented by considering the  
33 diversity of the types of fuel used to generate electricity,  
34 the availability and reliability of fuel supplies, and the  
35 impact of the volatility of fuel costs.

1     2. It is also the intent of the general assembly to  
 2 encourage the prudent development of baseload nuclear  
 3 electric power generation. Nuclear generation has a long-term  
 4 proven record of providing a safe, reliable, and secure  
 5 source of electricity in the United States and offers the  
 6 potential for significant job creation, substantial economic  
 7 development benefits, and the production of electricity at  
 8 significantly reduced levels of regulated air emissions when  
 9 compared to output from other thermal generation sources.  
 10 Further, the general assembly recognizes that meeting  
 11 stringent environmental permit requirements is expensive and  
 12 creates significant cost burdens on customers and employers  
 13 attributable to the imposition of additional comprehensive  
 14 and costly regulations by the United States environmental  
 15 protection agency that dramatically increase costs to  
 16 customers. Finally, the general assembly recognizes that  
 17 development of nuclear electric power generation requires  
 18 significant capital investment and a substantial period of  
 19 time for successful nuclear generation development, siting,  
 20 licensing, and deployment.

21     3. a. The board shall specify in advance, by order issued  
 22 after a contested case proceeding, the ratemaking principles  
 23 that will apply ~~when the costs of the electric power generating~~  
 24 ~~facility or alternate energy production facility are included~~  
 25 ~~in regulated electric rates~~ whenever a rate-regulated public  
 26 utility does any of the following:

27     (1) Files an application pursuant to section 476A.3 to  
 28 ~~construct~~ do any of the following in Iowa a:

29     (a) Construct a baseload electric power generating facility  
 30 with a nameplate generating capacity equal to or greater than  
 31 three hundred megawatts or a.

32     (b) Construct a combined-cycle electric power generating  
 33 facility, or an.

34     (c) Construct an alternate energy production facility as  
 35 defined in section 476.42, or to significantly.

1     (d) Significantly alter an existing generating facility.

2     (i) For purposes of this subparagraph division (d), a  
3 significant alteration of an existing generating facility must,  
4 in order to qualify for establishment of ratemaking principles,  
5 fall into one of the following categories:

6     ~~{a}~~ (A) Conversion of a coal fueled facility into a gas  
7 fueled facility.

8     ~~{b}~~ (B) Addition of carbon capture and storage facilities  
9 at a coal fueled facility.

10    ~~{c}~~ (C) Addition of gas fueled capability to a coal fueled  
11 facility, in order to convert the facility to one that will  
12 rely primarily on gas for future generation.

13    ~~{d}~~ (D) Addition of a biomass fueled capability to a coal  
14 fueled facility.

15    (ii) With respect to a significant alteration of an existing  
16 generating facility, an original facility shall not be required  
17 to be either a baseload or a combined-cycle facility. Only  
18 the incremental investment undertaken by a utility under  
19 subparagraph ~~divisions (a), (b), (c), or (d)~~ subdivision (i),  
20 subparagraph part (A), (B), (C), or (D) shall be eligible to  
21 apply the ratemaking principles established by the order issued  
22 pursuant to paragraph "e". ~~Facilities for which advanced~~  
23 ~~ratemaking principles are obtained pursuant to this section~~  
24 ~~shall not be subject to a subsequent board review pursuant to~~  
25 ~~section 476.6, subsection 21 to the extent that the investment~~  
26 ~~has been considered by the board under this section. To the~~  
27 ~~extent an eligible utility has been authorized to make capital~~  
28 ~~investments subject to section 476.6, subsection 21, such~~  
29 ~~investments shall not be eligible for ratemaking principles~~  
30 ~~pursuant to this section.~~

31    (2) Expresses its intent to file an application pursuant to  
32 section 476A.3 to build a nuclear generating facility including  
33 but not limited to small modular reactor technology, or  
34 expresses its intent to seek authority pursuant to a combined  
35 construction and operating license or an early site permit from

1 the United States nuclear regulatory commission.

2 ~~(2)~~ (3) Leases or owns in Iowa, in whole or in part, a any  
3 of the following:

4 (a) A new baseload electric power generating facility with  
5 a nameplate generating capacity equal to or greater than three  
6 hundred megawatts ~~or a.~~

7 (b) A combined-cycle electric power generating facility,  
8 ~~or a.~~

9 (c) A new alternate energy production facility as defined  
10 in section 476.42.

11 (d) A new nuclear generating facility including but not  
12 limited to small modular reactor technology.

13 b. In determining the applicable ratemaking principles, the  
14 board shall not be limited to traditional ratemaking principles  
15 or traditional cost recovery mechanisms.

16 (1) Among the principles and mechanisms the board may  
17 consider, the board has the authority to approve ratemaking  
18 principles proposed by a rate-regulated public utility that  
19 provide for reasonable restrictions upon the ability of  
20 the public utility to seek a general increase in electric  
21 rates under section 476.6 for at least three years after the  
22 generating facility begins providing service to Iowa customers.

23 (2) In determining the applicable ratemaking principles for  
24 a nuclear generating facility or for a license or permit from  
25 the United States nuclear regulatory commission, a ratemaking  
26 principles order issued by the board shall incorporate all of  
27 the following:

28 (a) Enable the utility to recover upon issuance of the  
29 order, through a rider pursuant to a tariff filing, a return  
30 on, and a return of all prudent costs associated with, the  
31 permitting, licensing, and construction of a nuclear generating  
32 facility. The amount of such cost recovery from utility  
33 customers shall be reduced by the amount of any funding of such  
34 costs borne by the United States department of energy or any  
35 other governmental entity, and costs recovered from any joint

1 owners of the nuclear generating facility. A determination of  
2 all prudent costs recoverable pursuant to this subparagraph  
3 division shall be made and the level and rate of the recovery  
4 of such charges reset annually to reflect the level of  
5 reasonable costs related to pursuit of United States nuclear  
6 regulatory commission authority or construction costs expected  
7 to be incurred in the next twelve months. A determination  
8 shall also be made of any adjustment required to balance the  
9 preceding period's actual expenditures and financing costs  
10 with what had been projected and included in costs recoverable  
11 for the preceding period. If applicable, the utility shall  
12 report to the board annually the budgeted and actual costs as  
13 compared to the estimated total in-service cost of the nuclear  
14 generating facility that was presented in the last annual  
15 filing, as projected through the expected in-service date of  
16 the nuclear generating facility. Following issuance of the  
17 board's ratemaking principles order, the utility shall file an  
18 application with the board on an annual basis providing such  
19 information, with the understanding that some cost components  
20 may be higher than estimated and other cost components may be  
21 lower. Each annual proceeding shall be completed by the board  
22 within ninety days from the date of filing the application.  
23 The complete methodology for determination of prudent costs  
24 shall be addressed as a ratemaking principle. All United  
25 States nuclear regulatory commission authority costs are  
26 to be recovered over a period not to exceed the estimated  
27 construction period for a nuclear generating facility as  
28 determined by the board. All nuclear generating facility  
29 construction costs are to be recovered over a period not  
30 to exceed the sum of the estimated construction period for  
31 a nuclear unit, plus its useful life as determined by the  
32 board. A utility's commencement of cost collection shall  
33 begin promptly after completion of the ratemaking principles  
34 proceeding, allowing for such additional time as may be needed  
35 by the board to review a compliance rider tariff filing.

1     (b) Enable the utility to recover in rates all prudently  
2 incurred expenses and costs, including but not limited to  
3 ongoing operations and maintenance costs, decommissioning  
4 funding and site restoration costs, and taxes for such a new  
5 nuclear generating facility.

6     (c) Base the allowed debt and equity return on a capital  
7 structure calculated using the average of the utility's  
8 actual thirteen monthly balances for long-term debt, preferred  
9 stock, and common equity. The long-term debt and preferred  
10 stock thirteen-month balances shall include adjustments for  
11 thirteen-month balances of unamortized discount, premium,  
12 expense, and any gain or loss on reacquired securities. The  
13 costs of long-term debt and preferred stock shall reflect  
14 the actual embedded interest and dividend rate for each  
15 issue as well as any annual amortization of unamortized  
16 discount, premium, expense, and any gain or loss on reacquired  
17 securities. The costs of common equity shall reflect the  
18 risks to which the investor's capital is exposed and not the  
19 investor's source of funds, and the investor-required cost of  
20 capital of the rate-regulated utility, and neither directly  
21 nor indirectly include additional debt of the rate-regulated  
22 utility's parent or other affiliates in the rate-regulated  
23 utility's capital structure or cost of service.

24     (d) Allow the utility to recover all prudent  
25 preconstruction and construction costs incurred if the  
26 utility elects not to complete or is precluded from completing  
27 construction of the nuclear generating facility. Costs  
28 determined to be prudent in prior annual proceedings shall not  
29 subsequently be redetermined to be imprudent. The utility  
30 shall recover such costs over a period equal to the period  
31 during which the costs were incurred or five years, whichever  
32 is longer, in a manner to be determined by the board.

33     (e) Allow the utility to recover the net book value of  
34 any generating facility that the utility commits to retire  
35 in anticipation of the operation of a new nuclear generating

1 facility. The board shall allow for the recovery of a return  
2 on, and a return of the book value of, the retired generating  
3 facility over a period not greater than the remaining useful  
4 life of the facility prior to a determination to retire the  
5 facility.

6 c. In determining the applicable ratemaking principles, the  
7 board shall make the following findings:

8 (1) The rate-regulated public utility has in effect a  
9 board-approved energy efficiency plan as required under section  
10 476.6, subsection 16.

11 (2) The Except for an application for ratemaking principles  
12 subject to paragraph "a", subparagraph (2), the rate-regulated  
13 public utility has demonstrated to the board that the public  
14 utility has considered other sources for long-term electric  
15 supply and that the facility or lease is reasonable when  
16 compared to other feasible alternative sources of supply. The  
17 rate-regulated public utility may satisfy the requirements of  
18 this subparagraph through a competitive bidding process, under  
19 rules adopted by the board, that demonstrate the facility or  
20 lease is a reasonable alternative to meet its electric supply  
21 needs.

22 d. The applicable ratemaking principles shall be determined  
23 in a contested case proceeding, which proceeding may be  
24 combined with the proceeding for issuance of a certificate  
25 conducted pursuant to chapter 476A.

26 e. The order setting forth the applicable ratemaking  
27 principles shall be issued prior to the commencement of  
28 construction or lease of the facility.

29 f. Following issuance of the order, the rate-regulated  
30 public utility shall have the option of proceeding according to  
31 either of the following:

32 (1) Withdrawing its application for a certificate pursuant  
33 to chapter 476A or withdrawing its ratemaking principles  
34 application.

35 (2) Proceeding with the construction or lease of the



1 facility or efforts to pursue United States nuclear regulatory  
 2 commission authority.

3 g. Notwithstanding any provision of this chapter to the  
 4 contrary, the ratemaking principles established by the order  
 5 issued pursuant to paragraph "e" shall be binding with regard  
 6 to the specific electric power generating facility in any  
 7 subsequent rate proceeding.

8 h. Any judicial action directly or indirectly resulting  
 9 in a modification of the board's ratemaking principles order  
 10 shall be applied prospectively only. No refunds shall be made  
 11 of revenues previously collected, unless the board determines  
 12 such revenues to be in excess of the costs incurred or to be  
 13 incurred by the utility. With respect to financial commitments  
 14 made prior to any judicial action directly or indirectly  
 15 resulting in a modification of the board's ratemaking  
 16 principles order, the utility shall recover such costs under a  
 17 cancellation costs ratemaking principle.

18 4. The utilities board and the consumer advocate may employ  
 19 additional temporary staff, or may contract for professional  
 20 services with persons who are not state employees, as the  
 21 board and the consumer advocate deem necessary to perform  
 22 required functions as provided in this section, including but  
 23 not limited to review of power purchase contracts, review of  
 24 emission plans and budgets, and review of ratemaking principles  
 25 proposed for construction or lease of a new generating  
 26 facility, including a new nuclear generating facility or United  
 27 States nuclear regulatory commission authority. Beginning  
 28 July 1, 2002, there is appropriated out of any funds in the  
 29 state treasury not otherwise appropriated, such sums as may  
 30 be necessary to enable the board and the consumer advocate to  
 31 hire additional staff and contract for services under this  
 32 section. The costs of the additional staff and services shall  
 33 be assessed to the utilities pursuant to the procedure in  
 34 section 476.10 and section 475A.6.

35 5. Facilities for which advanced ratemaking principles are

1 obtained pursuant to this section shall not be subject to a  
 2 subsequent board review pursuant to section 476.6, subsection  
 3 21, to the extent that the investment has been considered  
 4 by the board under this section. To the extent an eligible  
 5 utility has been authorized to make capital investments subject  
 6 to section 476.6, subsection 21, such investments shall not be  
 7 eligible for ratemaking principles pursuant to this section.

8     Sec. 3. ELECTRIC UTILITY RATE INCREASES — MITIGATION  
 9 STUDY. The utilities board of the utilities division of the  
 10 department of commerce shall conduct a study to identify  
 11 the potential impact to customer electric utility rates  
 12 resulting from recent federal regulations adopted by the United  
 13 States environmental protection agency, and strategies to  
 14 mitigate this impact. The study shall be undertaken with the  
 15 involvement of rate-regulated electric public utilities and  
 16 other stakeholders identified by the board. The board shall  
 17 submit a report regarding the results of the study by January  
 18 1, 2012.

#### 19 EXPLANATION

20     This bill relates to the permitting, licensing,  
 21 construction, and operation of nuclear generation facilities.

22     The bill provides that it is the intent of the general  
 23 assembly to encourage the prudent development of baseload  
 24 nuclear electric power generation, noting that nuclear  
 25 generation has a long-term proven record of providing a safe,  
 26 reliable, and secure source of electricity, and offers the  
 27 potential for significant job creation, substantial economic  
 28 development benefits, and the production of electricity at  
 29 significantly reduced levels of regulated air emissions when  
 30 compared to output from other thermal generation sources.  
 31 The bill provides that the general assembly also recognizes  
 32 that meeting stringent environmental permit requirements is  
 33 expensive and creates significant cost burdens on customers  
 34 and employers attributable to the imposition of additional  
 35 comprehensive and costly regulations by the United States

1 environmental protection agency that dramatically increase  
2 costs to customers. The bill provides that the general  
3 assembly additionally recognizes that development of nuclear  
4 electric power generation requires significant capital  
5 investment and a substantial period of time for successful  
6 nuclear generation development, siting, licensing, and  
7 deployment.

8 The bill requires a rate-regulated electric utility that  
9 was subject to a revenue sharing settlement agreement with  
10 regard to its electric base rates as of January 1, 2010, to  
11 file an application for ratemaking principles applicable to the  
12 construction of a nuclear generating facility with the Iowa  
13 utilities board, and that the application shall comply with the  
14 provisions of Code section 476.53.

15 The bill makes significant modifications to Code section  
16 476.53 consistent with the potential construction of a nuclear  
17 generating facility. The bill provides that the board shall  
18 specify in advance the ratemaking principles that will apply  
19 when a rate-regulated public utility expresses its intent to  
20 file an application pursuant to Code section 476A.3 to build a  
21 nuclear generating facility, including but not limited to small  
22 modular reactor technology, or expresses its intent to seek  
23 authority pursuant to a combined construction and operating  
24 license or an early site permit from the United States nuclear  
25 regulatory commission, or leases or owns in whole or in part  
26 such a facility.

27 The bill provides that in determining the applicable  
28 ratemaking principles for a nuclear generating facility or for  
29 a license or permit from the United States nuclear regulatory  
30 commission, a ratemaking principles order issued by the  
31 board shall incorporate several components. The bill states  
32 that after the order is issued, the utility may recover from  
33 utility customers a return on, and return of all prudent costs  
34 associated with, the permitting, licensing, and construction of  
35 a facility, reduced by the amount of any funding of such costs

1 borne by the United States department of energy or any other  
2 governmental entity, and costs recovered from any joint owners  
3 of the nuclear generating facility. The bill provides that  
4 the determination of prudent costs and the level and rate of  
5 the recovery of charges shall be reset annually to reflect the  
6 level of reasonable costs related to pursuit of United States  
7 nuclear regulatory commission authority or construction costs  
8 expected to be incurred by the utility in the next 12 months.  
9 A determination shall also be made of any adjustment required  
10 to balance the preceding period's actual expenditures and  
11 financing costs with what had been projected and included in  
12 costs recoverable for the preceding period. The bill directs  
13 a utility, if applicable, to report to the board annually the  
14 budgeted and actual costs as compared to the estimated total  
15 in-service cost of the nuclear generating facility that was  
16 presented in the last annual filing, as projected through the  
17 expected in-service date of the nuclear generating facility.  
18 The bill provides that after the order is issued, a utility  
19 shall file an application with the board on an annual basis  
20 providing the budgeted versus actual cost information, and that  
21 each annual proceeding shall be completed by the board within  
22 90 days from the date of filing the application.

23 The bill states that all United States nuclear regulatory  
24 commission authority costs are to be recovered over a period  
25 not to exceed the estimated construction period for a nuclear  
26 generating facility as determined by the board, and that all  
27 nuclear generating facility construction costs are to be  
28 recovered over a period not to exceed the sum of the estimated  
29 construction period for a nuclear unit, plus its useful life as  
30 determined by the board. The bill also states that a utility's  
31 commencement of cost collection shall begin promptly after  
32 completion of the ratemaking principles proceeding, allowing  
33 for such additional time as may be needed by the board to  
34 review a compliance rider tariff filing.

35 The bill provides that the order shall additionally enable

1 the utility to recover in rates all prudently incurred expenses  
2 and costs, including but not limited to ongoing operations and  
3 maintenance costs, decommissioning funding and site restoration  
4 costs, and taxes for a new nuclear generating facility.  
5 Further, the order shall base the allowed debt and equity  
6 return on a capital structure calculated using the average  
7 of the utility's actual 13 monthly balances for long-term  
8 debt, preferred stock, and common equity, including specified  
9 adjustments. The bill states that the costs of long-term  
10 debt and preferred stock shall reflect the actual embedded  
11 interest and dividend rate for each issue as well as any annual  
12 amortization of unamortized discount, premium, expense, and any  
13 gain or loss on reacquired securities, and that the cost of  
14 common equity shall reflect the risks to which the investor's  
15 capital is exposed and not the investor's source of funds, and  
16 the investor-required cost of capital of the rate-regulated  
17 utility, and shall neither directly nor indirectly include  
18 additional debt of the rate-regulated utility's parent or other  
19 affiliates in the rate-regulated utility's capital structure  
20 or cost of service.

21 The bill provides that the order shall also allow a utility  
22 to recover all prudent preconstruction and construction costs  
23 incurred if the utility elects not to complete or is precluded  
24 from completing construction of the nuclear generating  
25 facility, recovered over a period equal to the period during  
26 which the costs were incurred or five years, whichever is  
27 longer, and in a manner to be determined by the board. The  
28 bill states that the order shall further allow the utility to  
29 recover the net book value of any generating facility that the  
30 utility commits to retire in anticipation of the operation of  
31 a new nuclear generating facility, and that the board shall  
32 allow for the recovery of a return on, and return of the book  
33 value of, the retired generating facility over a period not  
34 greater than the remaining useful life of the facility prior to  
35 a determination to retire the facility.

1     The bill exempts a rate-regulated public utility applying  
2 for ratemaking principles with regard to a nuclear generating  
3 facility from requirements that a utility must demonstrate to  
4 the board that it has considered other sources for long-term  
5 electric supply and that the facility or a lease of a facility  
6 is reasonable when compared to other feasible alternative  
7 sources of supply, and removes a provision applicable with  
8 regard to any application that a utility may satisfy these  
9 requirements.

10    The bill provides that any judicial action directly  
11 or indirectly resulting in a modification of the board's  
12 ratemaking principles order shall be applied prospectively  
13 only, and that no refunds shall be made of revenues previously  
14 collected, unless the board determines such revenues to be in  
15 excess of the costs incurred or to be incurred by the utility.

16    The bill directs the board to conduct a study to identify  
17 the potential impact to customer electric utility rates  
18 resulting from recent federal regulations adopted by the United  
19 States environmental protection agency, and strategies to  
20 mitigate this impact. The study shall be undertaken with the  
21 involvement of rate-regulated electric public utilities and  
22 other stakeholders identified by the board. The bill requires  
23 the board to submit a report regarding the results of the study  
24 by January 1, 2012.

25    The bill makes additional conforming changes and relocation  
26 of specified provisions consistent with expanding applicable  
27 ratemaking principles in connection with a nuclear generating  
28 facility.